IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.545 OF 2005
IN
NOTICE OF MOTION NO.3264 OF 2004
IN
SUIT NO.3166 OF 2004

Madhu Kachharam Achra — Appellant
vs.
1. Gul Kachharam Achra & ors. — Respondents

Mr.V.R.Manohar, senior counsel with Mr.N.R.Bubna for the appellant.

Dr.Virendra Tulzapurkar, senior counsel with Mr.Shyam Diwan i/b. M/s.Ashwin Ankhad & Associates for the respondents 1 ansd 2.

Mr.Virag Tulzapurkar with Ms.Alpana Ghone i/b. M/s.Kanga & Co. for the respondents 3 to 7.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 18th July 2005

P.C.

Heard Mr.V.R.Manohar, the learned senior counsel for the appellant, Dr.Virendra Tulzapurkar, the learned senior counsel for the respondent no.1 & 2 and Mr.Virag Tulzapurkar, the learned counsel for the respondents 3 to 7.

2. The appellant is the original plaintiff. The respondents are the original defendant nos. 1 to 7.

3. Odeon Exhibitors Private Limited is a private limited company. Its share holding of 4500 shares was initially controlled by (a) Kanta G. Achhra (990 shares), (b) Madhu K. Achhra (990 shares), (c) Khushlani Investment Pvt.Ltd. (990 shares), (d) Suresh K. Achhra (225 shares), (e) Achhra Investment Pvt. Ltd. (990 shares) and (f) P.V.Chhutani (990 shares). According to the respondent no.1 (defendant no.1), Kanta G. Achhra transferred her 80 shares for a consideration of Rs.8,000/- on 9th August 1987, Madhu K. Achhra (plaintiff) transferred his 990 shares for consideration of Rs.1,98,000/- on 27th March 1992, Khushlani Investment transferred its 990 shares for consideration of Rs.1,98,000/- on 14th January 1993, Suresh K. Achhra transferred his 225 shares for consideration of Rs.45,000/- on 15th January 1993, Achhra Investment transferred 990 shares for consideration of Rs.1,98,000/- on 16th January 1993 and P.V.Chhutani transferred his 315 shares for consideration of Rs.63,000/- on 17th January 1993. These shares were transferred by the aforesaid shareholders in favour of the respondent no.1. As on 17th January 1993 as per the case of respondent no.1, he held 3590 shares while Kanta Achhra held 910 shares in the defendant no.3 company. The respondent no.1 Gul Achhra claims to have transferred his holding in the defendant no.3-company in favour of defendants 4 to 7.

4. Before purchase of 3590 shares in the defendant no.3 company, the defendants 4 to 7 made necessary inquiry and after fully being satisfied about the ownership, purchased the said shares somewhere in the month of August 2004.

5. In the Suit No.3166/2004 filed by the appellant before this Court interalia the declaration was sought that the plaintiff was the exclusive and absolute owner of 990 shares of defendant no.3 company and that the transfer of those shares by defendants no.1 and/or defendant no.4 was fraudulent. The plaintiff has prayed for quashing and setting aside the transfer of the 990 shares in the defendant no.3 company. The plaintiff has also prayed for retransfer of those 990 shares in defendant no.3 company in his favour and necessary correction/amendment in the register of company. The prayer for injunction restraining the defendants from carrying out any demolition or development on the property being part of final plot no.194 of Town Planning Scheme Ghatkopar No.III, City Survey No.5752 admeasuring 3566 sq.yards or 2981.164 sq.metres together with cinema Theatre constructed thereupon popularly known as Odeon Theatre has also been made.

6. The plaintiff also took out notice of motion seeking

interim reliefs in that regard.

7. The learned motion Judge dismissed the notice of motion after hearing the parties. Aggrieved thereby the plaintiff has come up in appeal.

8. We find ourselves in agreement with the view of the learned motion Judge that no case for grant of temporary injunction during the pendency of suit has been made out. While concurring with the reasons indicated by the learned motion Judge, we indicate additional reasons which persuade us not to interfere with the impugned order. Firstly, the purported transfer of 990 shares belonging to the plaintiff had taken place somewhere in the year 1992. For more than 12 years no steps were taken by the plaintiff in challenging the transfer. If the plaintiff continued to be the shareholder as he claims to be, at some point of time during all these years he would have taken some steps for calling the Annual General Meeting. Secondly, the documents on record do indicate that the plaintiff resigned as director of the company in the year 1992. There is affidavit of the plaintiff notarised by the notary on 26th October 1999 that reads thus:

> " I, Madhu Kachharam Achhra, aged about 43 years, Hindu, adult, resident of K.K.Mahal situated near Gurudev Co.op. Society, sec.17, Ulhasnagar-3, Dist. Thane solemnly affirm and

say as under:

1. That I was shareholder and also the Director of M/s. Odeon Exhibitors Pvt.Ltd. The said company is owner of Odeon Cinema and the property situated at Ghatkopar (E).

2. That being the Director of the company, I was also the licence holder of the cinema. The cinema licence was issued in my favour by the Commissioner of Police, Mumbai, the Licensing Authority.

3. That I have transferred all my shareholding of the company and have also resigned from the directorship of the company w.e.f. 1.4.1992. Thereby I am not having any connection with the whatsoever nature with the said company.

4. That I hereby give my no objection and also the express consent for the deletion of my name from the Odeon Cinema Licences and changing and/or transfer the same in the name of Mr.Gul K. Achhra.

5. That the said Mr.Gul K. Achhra is the shareholder of the company and also the Director of the company.

. Solemnly affirmed at Ulhasnagar/Mumbai aforesaid.

This day

Identified and explained by me.
Sd/-
Advocate. Executant
Sd/-
Before me. "

. Though the plaintiff has denied the aforesaid affidavit having been signed or sworn by him, at this stage it is difficult to accept the plaintiff's contention. The aforesaid affidavit does indicate that the plaintiff was the shareholder and also the director of the defendant no.3-company and as director of the

company he was also licence holder of the cinema. Having transferred the shareholding of the company and resigned from the directorship of the company with effect from 1st April 1992, he wanted his name to be deleted from Odeon cinema licence and transferred in the name of defendant no.1-Gul K. Achhra. If he had not transferred his shareholding in the year 1992 and continued to be the director of defendant no.3-company, he would have taken steps in calling the meeting of the Board of Directors but no such steps were taken. Thirdly, in so far as defendant 4 to 7 are concerned, prima facie, it appears that they are bonafide purchasers with valuable consideration. After verification from the company's record that 3050 shares were held by the defendant no.1, the defendants 4 to 7 purchased the said shares from the defendant no.1. The defendants 4 to 7 being bonafide purchasers for valuable consideration do not deserve to be injuncted in any manner during the pendency of the suit.

9. From the available material, prima facie, it is difficult to hold at this stage that the document/s of transfer were got up or manufactured or were executed fraudulently.

10. The aspects of balance of convenience and irreparable loss are not in favour of the plaintiff as

the purported transfer had taken place way back in the year 1992.

11. Thus, we are satisfied that no case for interference is made out in the impugned order.

12. The appeal, therefore, does not deserve to be admitted and is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)